

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAYMOND BRIAN RUIZ,

Plaintiff,

Case No. C16-0023-RAJ-MAT

V.

SGT. LEWIS,

Defendant.

## REPORT AND RECOMMENDATION

## INTRODUCTION AND SUMMARY CONCLUSION

This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Raymond Ruiz asserts in his amended civil rights complaint that his due process rights were violated during the course of his confinement at the Snohomish County Jail in the summer of 2015. Plaintiff also asserts state law causes of action of slander and defamation. Snohomish County Corrections Sergeant Scott Lewis is the only defendant remaining in this action.<sup>1</sup> Defendant Lewis now moves for summary judgment. Plaintiff, despite having been advised of the summary judgment requirements pursuant to *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), has filed no response

<sup>1</sup> Plaintiff identified the Snohomish County Jail as a defendant in his amended complaint filed on February 3, 2016. (See Dkt. 10.) However, the Snohomish County Jail was dismissed from this action prior to service. (Dkt. 11.)

1 to defendant's motion.

2 The Court, having now carefully reviewed defendant's motion for summary judgment,  
3 and the balance of the record, concludes that defendant's motion should be granted, albeit for  
4 reasons slightly different than those argued by defendant in his motion, and that plaintiff's  
5 amended complaint and this action should be dismissed with prejudice as to plaintiff's federal  
6 due process claims and without prejudice as to plaintiff's state law claims.

7 FACTS

8 Plaintiff Raymond Ruiz was booked into the Snohomish County Jail (SCJ) on June 26,  
9 2015, on multiple charges including domestic violence assault and attempting to take a motor  
10 vehicle without permission. (*See* Dkt. 26, Ex. B.) On August 24, 2015, plaintiff's cellmate  
11 spoke to SCJ Corrections Deputy (CD) Lyons and requested that he be placed in protective  
12 custody. (*See* Dkt. 25 at 2 and Ex. B.) CD Lyons contacted defendant Lewis to inform him of  
13 the request and to advise that he would have another deputy escort plaintiff's cellmate to the F-3  
14 module which was at that time being temporarily used as maximum security housing. (*See id.*)  
15 CD Fairfax thereafter escorted plaintiff's cellmate from the F-2 general population module,  
16 where he had been housed with plaintiff, to the F-3 module. (*Id.*)

17 Once plaintiff's cellmate arrived in the F-3 module, defendant Lewis spoke with him and  
18 inquired as to the reason he had asked to be placed in protective custody. (*Id.* at 2-3 and Ex. B.)  
19 The cellmate revealed to defendant Lewis that plaintiff had demanded sexual favors from him in  
20 exchange for extra food and that he no longer felt safe in his unit. (*See id.* at 3 and Ex. B.) In  
21 accordance with SCJ policies and procedures regarding allegations of sexual harassment,  
22 defendant Lewis ordered that plaintiff's cellmate be held in the F-3 module on maximum  
23 security status until he could be reclassified. (*See* Dkt. 25 at 2-3 and Ex. B.) Defendant Lewis

1 also instructed another deputy to move plaintiff to the F-1 module on maximum security status  
 2 pending reclassification. (*Id.*)

3 While plaintiff was being moved to the F-1 module, his cell was searched and corrections  
 4 staff found a cartoon drawing of an animal eating with the phrase, “It’s crazy what people will do  
 5 for food in here! Holy S\*\*\*!” (profanity redacted by defendant). (*Id.*) Defendant Lewis  
 6 thereafter drafted a written rule violation against plaintiff for sexual harassment for attempting to  
 7 coerce his cellmate to engage in sexual favors in exchange for extra food. (*See id.*) Defendant  
 8 Lewis did not deliver a written copy of the rule violation to plaintiff, but maintains that he did  
 9 arrange for plaintiff to be served with a copy of it by a “responding deputy.” (*See* Dkt. 25 at 3-  
 10 4.) In addition to writing a rule violation, defendant Lewis also completed a Prison Rape  
 11 Elimination Act (PREA) checklist relating to the incident.<sup>2</sup> (*Id.*)

12 On August 26, 2015, two days after plaintiff was moved to maximum security housing,  
 13 the SCJ Classification Committee met to review plaintiff’s status. (Dkt. 24 at 3.) The  
 14 Classification Committee determined that based on the allegations of plaintiff’s cellmate,  
 15 plaintiff’s continued housing in a maximum security module was appropriate for safety and  
 16 security reasons. (*Id.*) Plaintiff remained in the maximum security module until he was released  
 17 from custody on September 3, 2015. (*Id.* at 4.)

18 DISCUSSION

19 Plaintiff appears to assert in his amended civil rights complaint that defendant Lewis  
 20 violated his due process rights, and state law, when defendant Lewis had plaintiff moved to  
 21 maximum security housing on August 24, 2015 pending reclassification. (*See* Dkt. 10 at 3-4.)

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22 <sup>2</sup> The PREA checklist requires, as a response to a report of inmate-on-inmate sexual harassment,  
 23 separation of the alleged perpetrator from the alleged victim, which is what occurred in this instance. (*See* Dkt. 25 at 2 and Ex. A.)

1 Plaintiff contends that while confined in maximum security housing, he never received a rule  
2 violation or a hearing, and he never had a clear understanding of why he was there. (*Id.* at 3.)  
3 Defendant Lewis moves for summary judgment, arguing that he is entitled to qualified immunity  
4 because plaintiff cannot establish that he violated a clearly established right. (*See* Dkt. 23.)

5 Summary Judgment Standard

6 Summary judgment is appropriate when, viewing the evidence in the light most favorable  
7 to the nonmoving party, there exists “no genuine dispute as to any material fact” such that “the  
8 movant is entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a); *Anderson v.*  
9 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Material facts are facts which might affect the  
10 outcome of the pending action under governing law. *See Anderson*, 477 U.S. at 248. Genuine  
11 disputes are those for which the evidence is such that “a reasonable jury could return a verdict  
12 for the nonmoving party.” *Id.*

13 In response to a properly supported summary judgment motion, the nonmoving party  
14 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts  
15 demonstrating a genuine issue of fact for trial and must produce evidence sufficient to establish  
16 the existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of  
17 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a  
18 motion for summary judgment, the court may not weigh the evidence or make credibility  
19 determinations. *Anderson*, 477 U.S. at 248.

20 Section 1983 Standard

21 In order to sustain a cause of action under 42 U.S.C. § 1983, a plaintiff must show (i) that  
22 he suffered a violation of rights protected by the Constitution or created by federal statute, and  
23 (ii) that the violation was proximately caused by a person acting under color of state law. *See*

1 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The causation requirement of § 1983  
2 is satisfied only if a plaintiff demonstrates that a defendant did an affirmative act, participated in  
3 another's affirmative act, or omitted to perform an act which he was legally required to do that  
4 caused the deprivation complained of. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981)  
5 (citing *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978)). A defendant cannot be held  
6 liable under § 1983 solely on the basis of the individual's supervisory responsibility or position.  
7 *Monell v. Department of Social Servs., of City of New York*, 436 U.S. 658, 691-694 (1978).  
8 Rather, a plaintiff must allege that a defendant's own conduct violated the plaintiff's civil rights.

9 Qualified Immunity

10 Defendant argues in his motion for summary judgment that he is entitled to qualified  
11 immunity in this action. In *Saucier v. Katz*, 533 U.S. 194, 201 (2001), the Supreme Court set  
12 forth a two-prong test to be applied in evaluating claims of qualified immunity: (1) whether the  
13 facts alleged, when taken in the light most favorable to the party asserting the injury, show that  
14 the defendant's conduct violated a constitutional right; and (2) whether the right was clearly  
15 established. If the reviewing court concludes that no constitutional right was violated by the  
16 defendant's conduct, the court need not inquire further. *Id.* As will be explained in detail below,  
17 this Court concludes that defendant did not violate plaintiff's constitutional rights. This Court  
18 therefore does not reach the qualified immunity issue.

19 Due Process

20 Defendant argues that plaintiff's due process rights were not violated by his placement on  
21 maximum security status because, under the Supreme Court's decision in *Sandin v. Conner*, 515  
22 U.S. 472 (1995), plaintiff had no liberty interest in being free from administrative segregation  
23 nor any constitutional right to a particular classification or custody level. Defendant's reliance

1 on *Sandin* is misplaced. In *Sandin*, the Supreme Court held that an incarcerated prisoner had no  
2 liberty interest in being free from segregated confinement imposed as a disciplinary measure  
3 because such confinement did not constitute an “atypical and significant hardship on the inmate  
4 in relation to the ordinary incidents of prison life.” *Id.* at 484-86. The Supreme Court also  
5 recognized in *Sandin* that its rationale regarding convicted prisoners did not apply to pretrial  
6 detainees. *See Mitchell v. Dupnik*, 75 F.3d 517, 523-24 (9th Cir. 1996). It appears from the  
7 record before this Court that plaintiff was a pretrial detainee at times relevant to this action and  
8 not a convicted prisoner. Thus, *Sandin* does not apply.

9 This Court instead looks to the Supreme Court’s decision in *Bell v. Wolfish*, 441 U.S. 520  
10 (1979), a case which dealt with the interests of pretrial detainees. In *Bell*, the Supreme Court  
11 held that a pretrial detainee “may not be punished prior to an adjudication of guilt in accordance  
12 with due process of law.” *Id.* at 535. The Court explained that the proper inquiry when  
13 evaluating the constitutionality of conditions or restrictions of pretrial detention is therefore  
14 whether those conditions amount to punishment of the detainee. *Id.*

15 While the Due Process Clause protects pretrial detainees from punishment, not every  
16 disability imposed during pretrial detention constitutes “punishment” in the constitutional sense.  
17 *Bell*, 441 U.S. at 537. Thus, the test to be applied in determining whether particular restrictions  
18 and conditions imposed during the course of pretrial detention amount to punishment in the  
19 constitutional sense is whether there was an express intent to punish, or “whether an alternative  
20 purpose to which [the restriction] may rationally be connected is assignable for it, and whether it  
21 appears excessive in relation to the alternative purpose assigned [to it]. *Id.* at 538 (quoting  
22 *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963)).

23 The Supreme Court has recognized that “maintaining institutional security and preserving

1 internal order and discipline are essential goals that may require limitation or retraction of the  
2 retained constitutional rights of both convicted prisoners and pretrial detainees.” *Id.* at 546. The  
3 Supreme Court has further recognized that prison administrators “should be accorded wide-  
4 ranging deference in the adoption and execution of policies and practices that in their judgment  
5 are needed to preserve internal order and discipline and to maintain institutional security.” *Id.* at  
6 547.

7 The record makes clear that both plaintiff and his cellmate were moved to maximum  
8 security housing on August 24, 2015 pending reclassification after plaintiff’s cellmate made an  
9 allegation of sexual harassment against plaintiff. (See Dkt. 25 at 2.) According to defendant  
10 Lewis, this is the standard practice at SCJ when there is an allegation of sexual harassment. (*Id.*)  
11 Defendant Lewis explains that moving the involved parties to maximum security housing serves  
12 to ensure the safety of those inmates, and others, pending reclassification by the SCJ  
13 Classification Committee. (*Id.*)

14 On August 26, 2015, two days after plaintiff was placed in maximum security housing,  
15 the SCJ Classification Committee met to review plaintiff’s status. (Dkt. 24 at 3.) According to  
16 SCJ Classification Counselor Terry Bloss, when considering inmate housing assignments, the  
17 Classification Committee considers such factors as whether the inmate presents any risk factors,  
18 has a potential for violence, and/or has any special needs or life safety issues. (*Id.*) After  
19 reviewing plaintiff’s status, the Committee determined that, based on the allegations of plaintiff’s  
20 cellmate, continued housing in a maximum security module was appropriate for reasons of safety  
21 and security. (See *id.* at 3 and Ex. A at 1.)

22 The evidence in the record supports the conclusion that plaintiff’s initial transfer to a  
23 maximum security housing module, and his subsequent classification to maximum security

1 status, was consistent with constitutional principles. Plaintiff offers no evidence demonstrating  
2 that his transfer to maximum security housing amounted to “punishment” in the constitutional  
3 sense. It appears instead that SCJ staff, consistent with SCJ policies and procedures regarding  
4 allegations of sexual harassment, separated the individuals involved and then employed their  
5 classification system to ensure the safety and security of the inmates and to preserve internal  
6 order and discipline. This they were entitled to do. Plaintiff fails to establish that defendant  
7 Lewis violated his substantive due process rights and, thus, defendant Lewis is entitled to  
8 summary judgment with respect to that claim.

9 Plaintiff also appears to assert in his amended complaint that his procedural due process  
10 rights were violated because he did not receive a copy of the rule violation written by defendant  
11 Lewis and he did not receive a hearing on the rule violation. (Dkt. 10 at 3.) However, plaintiff  
12 fails to allege facts demonstrating that these purported deficiencies in the process give rise to any  
13 individual liability on the part of defendant Lewis. In fact, the evidence submitted by defendant  
14 in support of his summary judgment motion demonstrates that it was not defendant Lewis’s duty  
15 to serve the written rule violation on plaintiff, or to conduct any sort of hearing with respect to  
16 the allegations of sexual harassment or plaintiff’s assignment to maximum security housing.  
17 (See Dkt. 25 at 6-7.) Thus, to the extent plaintiff intends to assert a procedural due process claim  
18 against defendant Lewis, that claim fails as well.

19 Pendent State Law Claims

20 In addition to the federal constitutional claims asserted against defendant Phillips in  
21 plaintiff’s amended complaint, plaintiff also appears to assert violations of state tort law. The  
22 Supreme Court has stated that federal courts should refrain from exercising their pendent  
23 jurisdiction when the federal claims are dismissed before trial. *United Mine Workers v. Gibbs*,

1 383 U.S. 715, 726 (1966). Because defendant Lewis is entitled to summary judgment with  
2 respect to plaintiff's federal constitutional claims, plaintiff's state law claims against defendant  
3 Lewis are necessarily subject to dismissal at this juncture.

4 **CONCLUSION**

5 For the foregoing reasons, this Court recommends that defendant Lewis's motion for  
6 summary judgment be granted and that plaintiff's amended complaint and this action be  
7 dismissed with prejudice as to plaintiff's federal due process claims and without prejudice as to  
8 plaintiff's state law claims. A proposed order accompanies this Report and Recommendation.

9 **DEADLINE FOR OBJECTIONS**

10 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
11 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report  
12 and Recommendation is signed. Failure to file objections within the specified time may affect  
13 your right to appeal. Objections should be noted for consideration on the District Judge's  
14 motions calendar for the third Friday after they are filed. Responses to objections may be filed  
15 within **fourteen (14) days** after service of objections. If no timely objections are filed, the  
16 matter will be ready for consideration by the District Judge on **September 23, 2016**.

17 DATED this 26th day of August, 2016.

18  
19   
20 Mary Alice Theiler  
21 United States Magistrate Judge  
22  
23